

Law Office of Nora J. Chorover

nchorover@choroverlaw.com

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MAR 27 2017

OFFICE OF THE REGIONAL ADMINISTRATOR

March 22, 2017

BY CERTIFIED MAIL

Myles F. Hogan, President
Community Tree Service, Inc.
62 Davis Road
Chelmsford, MA 01824
Certified Mail # 7014 3490 0000 7430 0060

Myles F. Hogan, Registered Agent
Community Tree Service, Inc.
163 Billerica Road
Chelmsford, MA 01824
Certified Mail # 7014 3490 0000 7429 9951

Re: 60-Day Notice of Violations and Intent to File Suit Regarding Noncompliance
with Federal Clean Water Act's Industrial Stormwater Discharge Requirements:
163 Billerica Road, Chelmsford, MA 01824

Dear Mr. Hogan,

This office represents Clean Water Action, a national non-profit citizens' organization working for prevention of pollution in the nation's waters. Clean Water Action has over one million members nationally, more than 30,000 of whom reside in Massachusetts.

We write to give notice that Clean Water Action intends to file a civil action in the United States District Court for the District of Massachusetts under Section 505 of the Federal Clean Water Act (the "Act") against Community Tree Service, Inc. ("Community Tree" or the "Facility"). The subject of the action will be Community Tree's unlawful discharge of stormwater from its log storage and handling facility at 163 Billerica Road, Chelmsford, MA (the "Facility").

Activities that take place at industrial facilities, such as material handling and storage, are often exposed to the weather. As runoff from rain or snowmelt comes into contact with these materials, it picks up pollutants and transports them to nearby rivers, lakes, or coastal waters and tributaries thereto, including but not limited to storm sewer systems, wetlands, and other surface waters. Stormwater pollution is a significant source of water quality problems for the nation's waters.

Exposure of precipitation to lumber, mulch, bark and other wood debris at log storage and handling facilities is likely to cause stormwater to become contaminated with pollutants including but not limited to Total Suspended Solids (TSS) and Biochemical Oxygen Demand (BOD).

Stormwater runoff from the Community Tree facility discharges to two or more catch basins that lead to River Meadow Brook, a tributary of the Concord River. For many years, Community Tree has operated this Facility without obtaining coverage under EPA's Multi-

Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "Permit") and without complying with the Permit's terms.¹

The citizen suit provision allows Clean Water Action to bring a civil action against Community Tree in the United States District Court for the district of Massachusetts. Clean Water Action will ask the Court to ensure Community Tree's future compliance with the Act, assess civil penalties in an appropriate amount,² award plaintiff its litigation costs, including attorney and expert fees, and award any other relief the Court deems appropriate. This formal 60-day notice of intent to sue is being served pursuant to 40 C.F.R., Part 135.

This notice is being provided by:

Cindy Luppi, New England Regional Co-Director
Clean Water Action
88 Broad Street, Lower Level
Boston, MA 02110
(617) 338-8131
(617) 335-6449 (fax)

Counsel for Clean Water Action in this case is:
Nora J. Chorover
Law Office of Nora J. Chorover
11 Green Street
Boston, MA 02130
617-477-3550

A. THE REQUIREMENTS OF THE ACT

1. Pollutant Discharges without a Permit are Illegal.

The Clean Water Act makes the discharge of pollution into waters of the United States unlawful unless the discharge is in compliance with certain statutory requirements, including the requirement that the discharge be permitted by the federal Environmental Protection Agency ("EPA") under the National Discharge Elimination System ("NPDES").

¹ The General Permit was first issued in 1995 and most recently reissued in June 2015 in substantially similar form. See 60 Fed. Reg. 50804 (September 29, 1995); 65 Fed. Reg. 64746 (October 30, 2000); 73 Fed. Reg. 56572 (September 29, 2008), and reissued in 2015 pursuant to 80 Fed. Reg. 34403 (June 4, 2015).

² The Statute authorizes the Court to assess a penalty of *up to* \$37,500 a day for each violation. See 33 U.S.C. § 1319(d) and 78 Fed. Reg. 66647 (Nov. 6, 2013).

2. Log Storage and Handling Facilities Must Comply with EPA's General Industrial Stormwater Permit.

In order to minimize polluted stormwater discharges from certain categories of industrial facilities, EPA has issued a general industrial stormwater permit (the "Permit").³ Log storage and handling facilities are subject to the requirements of this Permit.⁴ Log storage and handling facilities that carry on other types of activities also subject to the requirements of the Permit must also comply with any sector-specific requirements for such co-located industrial activity.⁵

3. Log Storage and Handling Facilities Must Develop and Implement a Stormwater Pollution Prevention Plan ("SWPPP").

An owner or operator (hereafter referred to as "operator") of a facility subject to the requirements of the Permit must prepare a SWPPP before being authorized to discharge under the Permit.⁶ The SWPPP must be "prepared in accordance with good engineering practices"⁷ and, among other things,

- identify potential sources of pollution at the facility;⁸
- describe and ensure implementation of control measures that are technologically available and economically practicable and achievable in light of best industry practice;⁹ and
- set forth specific procedures to assure compliance with effluent limitations and monitoring/inspection requirements of the Permit.¹⁰

4. Log Storage and Handling Facilities Must Submit to EPA a Notice of Intent to be Covered by the Permit By EPA's Established Deadlines.

After completing and implementing its SWPPP,¹¹ a log storage and handling facility must submit to EPA a Notice of Intent ("NOI") to be covered by the Permit. EPA's initial NOI filing deadline was January 1, 1996.¹² When the agency reissued the Permit in 2015, it reminded

³ The General Permit was first issued in 1995 and most recently reissued in June 2015 in substantially similar form. See 60 Fed. Reg. 50804 (Sept. 29, 1995); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008), and reissued in 2015 pursuant to 80 Fed. Reg. 34403 (June 4, 2015).

⁴ Permit, Appendix D, pg. D-1.

⁵ Permit, pg. 54.

⁶ Permit, pg. 30.

⁷ Id.

⁸ Permit, pgs. 32-33.

⁹ Permit, pgs. 14, 33-34.

¹⁰ Permit, pgs. 34-36.

¹¹ Permit, pg. 30 ("You must prepare a SWPPP for your facility before submitting your Notice of Intent (NOI) for permit coverage.").

¹² See 60 Fed. Reg. 50804.

operators of subject facilities that unpermitted stormwater discharges are “unauthorized,” and ordered all subject facilities to file an NOI for the 2015 permit by September 2, 2015.¹³

5. Log Storage and Handling Facilities Must Comply with the Terms of the Permit.

The Permit requires log storage and handling facilities to, among other things:

- a. ensure that stormwater discharges meet applicable water quality standards;¹⁴
- b. reduce and/or eliminate pollutants to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice;¹⁵
- c. implement specific best management practices set forth in the Permit for log storage and handling facilities;¹⁶
- d. monitor stormwater discharges for compliance with benchmark limitations applicable to log storage and handling facilities;¹⁷
- e. perform and document regular facility and stormwater inspections;¹⁸
- f. timely implement and document any necessary corrective actions;¹⁹
- g. report on monitoring, inspections and corrective action to EPA by specified deadlines;²⁰
- h. comply with those permit conditions applicable to permittees in Massachusetts, including but not limited to
 - i. submission of monitoring results to the Regional Office of the Massachusetts Department of Environmental Protection (“MADEP”) for the MADEP Region in which the Facility is located, where the monitoring identifies exceedences of any effluent limits or benchmarks for which monitoring is required under the Permit, and
 - ii. where effluent limits and/or benchmarks are exceeded, submission to the MADEP Regional Office of any follow-up monitoring and a description of the corrective actions required and undertaken to meet those effluent limits and/or benchmarks.²¹

¹³ Permit, pg. 10 (unpermitted discharges from the facility will continue to be “unauthorized” unless allowed under the Permit). See also 40 C.F.R. §122.28(b)(2)(i) (“A discharger ... who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge”).

¹⁴ Permit, pg. 20 (“Your discharge must be controlled as necessary to meet applicable water quality standards.”).

¹⁵ Permit, pg. 14.

¹⁶ Permit, pg. 54-56.

¹⁷ Permit, pg. 55: Community Tree was required to monitor for TSS.

¹⁸ Permit, pgs. 22-26.

¹⁹ Permit, pgs. 27-29.

²⁰ Permit, pgs. 47-51.

²¹ Permit, pgs. 170-171.

B. COMMUNITY TREE'S VIOLATIONS AND DATES OF VIOLATIONS

Clean Water Action's complaint will address violations that occurred during the last five years.

1. Violations that Have Occurred on Specific Days During the Last Five Years: Discharges of Stormwater from the Facility Without a NPDES permit

Community Tree's violations of the Act's prohibition against unpermitted discharges occurred and are continuing to occur at the Facility each time rain, snow melt or another factor results in industrial stormwater discharges from the Facility to waters of the United States. The days during the last five years on which rain, snow melt or other factors caused stormwater to be discharged from the Facility to waters of the United States are listed on Exhibit B hereto. Clean Water Action's complaint will also address any non-permitted stormwater discharge violations that occurred or occur between the last date listed on Exhibit B, and the date on which the complaint is filed.

2. Violations that Have Occurred on Each Day During the Last Five Years:²²

The following violations of the Act are set forth on Exhibit C. These violations have occurred on a daily basis for the last five years and they are continuing to occur.

- a. failure to prepare and implement a SWPPP;
- b. failure to submit an NOI to be covered by the Permit;
- c. failure to ensure that stormwater discharges from the Facility will not cause or have the reasonable potential to cause or contribute to a violation of water quality standards;
- d. failure to implement adequate control measures and corrective action;
- e. failure to monitor for compliance with benchmark limitations;
- f. failure to report monitoring results for the Facility to EPA by the specific deadlines;
- g. failure to conduct required Facility and stormwater inspections, and;
- h. failure to complete and submit annual reports.

To the extent that Community Tree is carrying out any other industrial activity at the Facility which is also subject to the requirements of the Permit, then Community Tree's failure to comply with the Permit requirements for such co-located activities is also a violation of the Clean Water Act.

²² Clean Water Action believes that the violations set forth in this Section B.2 have occurred on each day of the last five years, and not just on rain days. However, to the extent it is determined that rain days are relevant in determining the dates of violations, such rain dates through March 22, 2017 are set forth on Exhibit B hereto. The complaint, when filed, will set forth additional rain dates since that date.

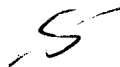
Community Tree Service, Inc.
March 22, 2017
Page 6

The photographs appended to this notice letter as Exhibit A illustrate Community Tree's failure to implement adequate pollutant control measures at its Chelmsford facility. The conditions depicted by the photos were observed to be present on November 17, 2016 and February 28, 2017, the two dates Clean Water Action visited the public road adjacent to the facility. Catch basins outside of the facility that drain to a creek across Industrial Road to the west showed evidence of excessive sedimentation. Sediment also appeared to be leaving the facility's west side where it could either run to a catch basin or overtop the road and enter the creek to the west.

CONCLUSION

Clean Water Action believes this Notice of Violations and Intent to File Suit sufficiently states the basis for a civil action. During the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of litigation. If you wish to pursue such discussions, please have your attorney contact us within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Nora J. Chorover
Attorney for
CLEAN WATER ACTION

cc: (by certified mail)

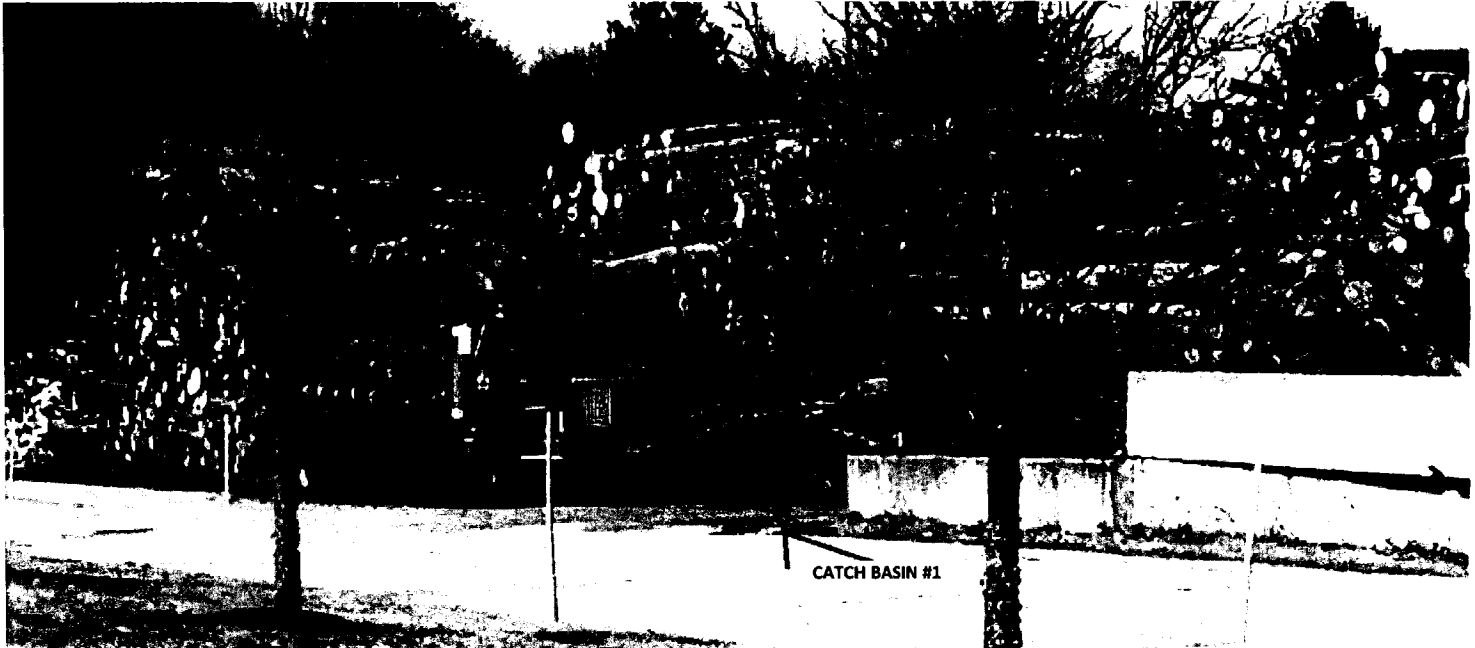
Deborah Szaro
Acting Regional Administrator
EPA New England, Region 1
5 Post Office Square-Suite 100
Boston, MA 02109-3912
Certified Mail# 7014 3490 0000 7429 9976

Scott Pruitt, Administrator
US EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460
Certified Mail# 7014 3490 0000 7430 0077

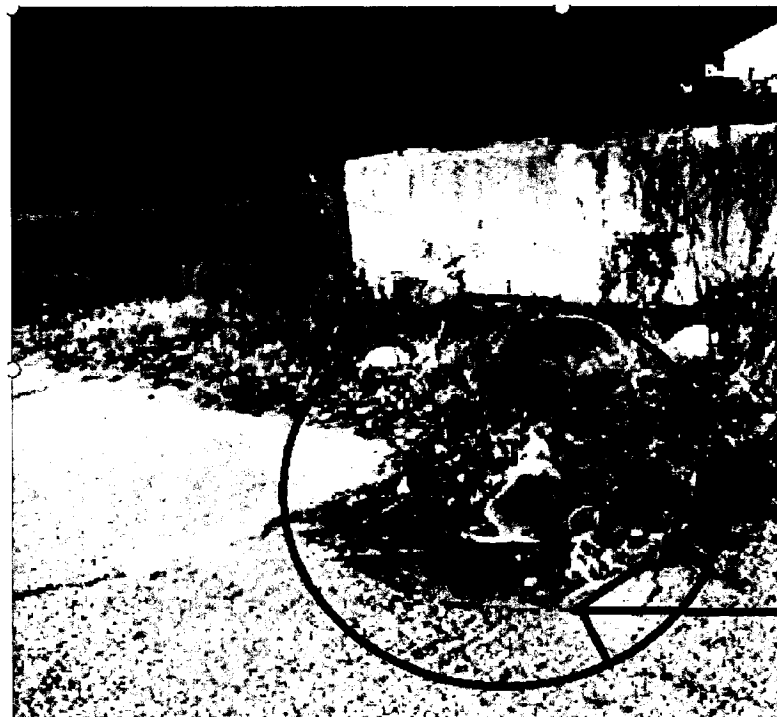
Martin Suuberg, Commissioner
Massachusetts Department of Environmental
Protection
One Winter Street
Boston, MA 02108
Certified Mail# 7014 3490 0000 7429 9968

EXHIBIT A

PICTURE #1a



PICTURE #1b

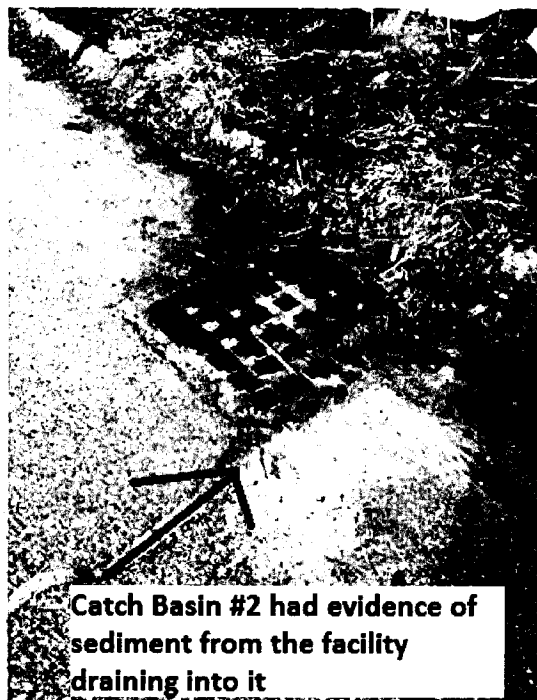


Catch Basin #1 had
debris clogging it

PICTURE #2a



PICTURE #2b



PICTURE #3



excessive sediment appeared to be accumulating outside the berm to the west of the facility where it could be mobilized to travel to a catch basin or to overtop the road and enter the creek to the west

OVERVIEW SHOWING LOCATION OF PHOTOS

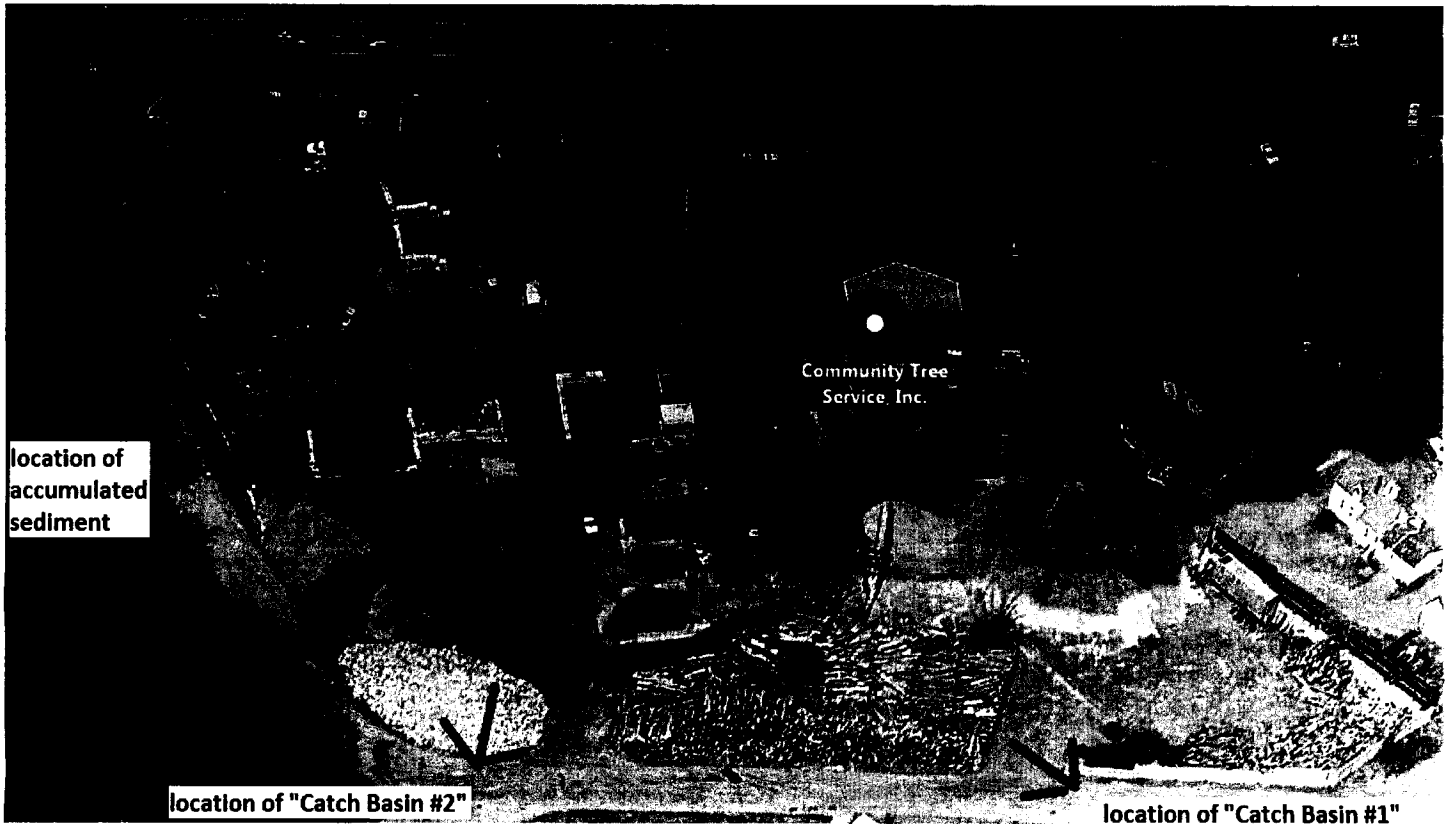


EXHIBIT B

DAYS BETWEEN March 22, 2012 AND March 22, 2017 ON WHICH STORMWATER FROM FACILITY DISCHARGED TO WATERS OF THE UNITED STATES

March 2012:	26
April 2012:	2, 13, 23, 24
May 2012:	1, 2, 5, 9, 10, 11, 15, 16, 17, 22, 23
June 2012:	3, 4, 5, 9, 13, 14, 24, 26
July 2012:	4, 19, 29, 30
August 2012:	1, 2, 5, 6, 11, 12, 13, 16, 18, 29
September 2012:	5, 6, 19, 29
October 2012:	1, 3, 4, 5, 8, 11, 15, 16, 20, 29, 30, 31
November 2012:	1, 8, 9, 14
December 2012:	10, 11, 17, 18, 19, 22, 27, 28, 30
January 2013:	17, 29, 31
February 2013:	1, 9, 10, 12, 20, 25, 27, 28
March 2013:	7, 8, 9, 13, 19, 20
April 2013:	1, 10, 11, 20
May 2013:	9, 10, 12, 13, 20, 22, 23, 24, 25, 26, 30
June 2013:	14, 18, 19, 27, 28
July 2013:	2, 9, 24, 26, 30
August 2013:	2, 10, 31
September 2013:	13, 14, 22
October 2013:	5, 6
November 2013:	1, 18, 27, 28
December 2013:	2, 7,
January 2014:	12, 15
February 2014:	6, 14, 16, 19, 20, 21, 22
March 2014:	13, 20, 30, 31
April 2014:	8
May 2014:	1, 17, 28
June 2014:	6, 14, 26
July 2014:	4, 5, 8, 10, 16, 28
August 2014:	8, 14, 22
September 2014:	1, 7, 14
October 2014:	2, 12, 17, 23, 24
November 2014:	2, 7, 14, 17, 18
December 2014:	3, 6, 7, 10, 11, 17, 25
January 2015:	4, 19, 25, 27, 28
February 2015:	3, 6, 8, 9, 10, 15, 16, 22
March 2015:	2, 4, 15, 27, 29
April 2015:	4, 9, 10, 21
May 2015:	13
June 2015:	1, 2, 16, 21, 24, 28, 29
July 2015:	2, 10, 31
August 2015:	12
September 2015:	11, 14, 30
October 2015:	1

November 2015:	11, 12, 13, 20, 21, 29
December 2015:	2, 3, 4, 15, 18, 23, 24, 27, 28, 29, 30
January 2016:	11, 13, 17
February 2016:	4, 6, 9, 16, 17, 24, 25
March 2016:	2, 11, 15, 16, 21, 26, 29
April 2016:	5, 8, 23, 27
May 2016:	24, 25
June 2016:	21
July 2016:	10
August 2016:	11, 14, 17, 22
September 2016:	2, 19, 20, 24, 27
October 2016:	1, 2, 28
November 2016:	16, 30
December 2016:	1
January 2017:	1, 4, 8, 11
February 2017:	8, 10, 13
March 2017:	15

EXHIBIT C
TABLE OF COMMUNITY TREES' VIOLATIONS
March 22, 2012 to the present

<u>Type of Violation</u>	<u>Quarter</u>	<u>Parameter</u>	<u>Beginning Date of Violation</u>	<u>Earliest End Date of Violation</u>
Failure to Prepare and Implement a SWPPP	n/a	n/a	March 22, 2012	Present
Failure to Submit NOI to be Covered by the Permit	n/a	n/a	March 22, 2012	Present
Failure to Ensure that Discharges Will Not Violate Water Quality Standards	n/a	n/a	March 22, 2012	Present
Failure to Implement Adequate Control Measures and Corrective Actions	All	TSS	March 22, 2012	Present
Failure to Conduct Benchmark Monitoring	Apr-Jun 2012	TSS	June 30, 2012	Present
Failure to Report Results of Benchmark Monitoring	Apr-Jun 2012	TSS	July 31, 2012	Present
Failure to Conduct Required Facility and Stormwater Inspection	Apr-Jun 2012	n/a	June 30, 2012	Present
Failure to Conduct Benchmark Monitoring	Jul-Sep 2012	TSS	September 30, 2012	Present
Failure to Report Results of Benchmark Monitoring	Jul-Sep 2012	TSS	October 31, 2012	Present
Failure to Conduct Required Facility and Stormwater Inspection	Jul-Sep 2012	n/a	September 30, 2012	Present
Failure to Conduct Benchmark Monitoring	Oct-Dec 2012	TSS	December 31, 2012	Present
Failure to Report Results of Benchmark Monitoring	Oct-Dec 2012	TSS	January 31, 2013	Present
Failure to Conduct Required Facility and Stormwater Inspection	Oct-Dec 2012	n/a	December 31, 2012	Present
Failure to Conduct Benchmark Monitoring	Jan-Mar 2013	TSS	March 31, 2013	Present
Failure to Report Results of Benchmark Monitoring	Jan-Mar 2013	TSS	April 30, 2013	Present
Failure to Conduct Required Facility and Stormwater Inspection	Jan-Mar 2013	n/a	March 31, 2013	Present
Failure to Conduct Benchmark Monitoring	Apr-Jun 2013	TSS	June 30, 2013	Present
Failure to Report Results of Benchmark Monitoring	Apr-Jun 2013	TSS	July 31, 2013	Present
Failure to Conduct Required Facility and Stormwater Inspection	Apr-Jun 2013	n/a	June 30, 2013	Present
Failure to Conduct Benchmark Monitoring	Jul-Sep 2013	TSS	September 30, 2013	Present
Failure to Report Results of Benchmark Monitoring	Jul-Sep 2013	TSS	October 31, 2013	Present
Failure to Conduct Required Facility and Stormwater Inspection	Jul-Sep 2013	n/a	September 30, 2013	Present
Failure to Conduct Benchmark Monitoring	Oct-Dec 2013	TSS	December 31, 2013	Present
Failure to Report Results of Benchmark Monitoring	Oct-Dec 2013	TSS	January 31, 2014	Present
Failure to Conduct Required Facility and Stormwater Inspection	Oct-Dec 2013	n/a	December 31, 2013	Present

Failure to Conduct Benchmark Monitoring	Jan-Mar 2014	TSS	March 31, 2014	Present
Failure to Report Results of Benchmark Monitoring	Jan-Mar 2014	TSS	April 30, 2014	Present
Failure to Conduct Required Facility and Stormwater Inspection	Jan-Mar 2014	n/a	March 31, 2014	Present
Failure to Conduct Benchmark Monitoring	Apr-Jun 2014	TSS	June 30, 2014	Present
Failure to Report Results of Benchmark Monitoring	Apr-Jun 2014	TSS	July 31, 2014	Present
Failure to Conduct Required Facility and Stormwater Inspection	Apr-Jun 2014	n/a	June 30, 2014	Present
Failure to Conduct Benchmark Monitoring	Jul-Sep 2014	TSS	September 30, 2014	Present
Failure to Report Results of Benchmark Monitoring	July-Sep 2014	TSS	October 31, 2014	Present
Failure to Conduct Required Facility and Stormwater Inspection	July-Sep 2014	n/a	September 30, 2014	Present
Failure to Conduct Benchmark Monitoring	Oct-Dec 2014	TSS	December 31, 2014	Present
Failure to Report Results of Benchmark Monitoring	Oct-Dec 2014	TSS	January 31, 2015	Present
Failure to Conduct Required Facility and Stormwater Inspection	Oct-Dec 2014	n/a	December 31, 2014	Present
Failure to Conduct Benchmark Monitoring	Jan-Mar 2015	TSS	March 31, 2015	Present
Failure to Report Results of Benchmark Monitoring	Jan-Mar 2015	TSS	April 30, 2015	Present
Failure to Conduct Required Facility and Stormwater Inspection	Jan-Mar 2015	n/a	March 31, 2015	Present
Failure to Conduct Benchmark Monitoring	Apr-Jun 2015	TSS	June 30, 2015	Present
Failure to Report Results of Benchmark Monitoring	Apr-Jun 2015	TSS	July 31, 2015	Present
Failure to Conduct Required Facility and Stormwater Inspection	Apr-Jun 2015	n/a	June 30, 2015	Present
Failure to Conduct Benchmark Monitoring	Jul-Sep 2015	TSS	September 30, 2015	Present
Failure to Report Results of Benchmark Monitoring	Jul-Sep 2015	TSS	October 31, 2015	Present
Failure to Conduct Required Facility and Stormwater Inspection	Jul-Sep 2015	n/a	September 30, 2015	Present
Failure to Conduct Benchmark Monitoring	Oct-Dec 2015	TSS	December 31, 2015	Present
Failure to Report Results of Benchmark Monitoring	Oct-Dec 2015	TSS	January 31, 2016	Present
Failure to Conduct Required Facility and Stormwater Inspection	Oct-Dec 2015	n/a	December 31, 2015	Present
Failure to Conduct Benchmark Monitoring	Jan-Mar 2016	TSS	March 31, 2016	Present
Failure to Report Results of Benchmark Monitoring	Jan-Mar 2016	TSS	April 30, 2016	Present
Failure to Conduct Required Facility and Stormwater Inspection	Jan-Mar 2016	n/a	March 31, 2016	Present
Failure to Conduct Benchmark Monitoring	Apr-Jun 2016	TSS	June 30, 2016	Present
Failure to Report Results of Benchmark Monitoring	Apr-Jun 2016	TSS	July 31, 2016	Present
Failure to Conduct Required Facility and Stormwater Inspection	Apr-Jun 2016	n/a	June 30, 2016	Present
Failure to Conduct Benchmark Monitoring	Jul-Sep 2016	TSS	September 30, 2016	Present
Failure to Report Results of Benchmark Monitoring	Jul-Sep 2016	TSS	October 31, 2016	Present

Failure to Conduct Required Facility and Stormwater Inspection	Jul-Sept 2016	n/a	September 30, 2016	Present
Failure to Conduct Benchmark Monitoring	Oct-Dec 2016	TSS	December 31, 2016	Present
Failure to Report Results of Benchmark Monitoring	Oct-Dec 2016	TSS	January 31, 2017	Present
Failure to Conduct Required Facility and Stormwater Inspection	Oct-Dec 2016	n/a	December 31, 2016	Present
Failure to Submit Annual Report	n/a	n/a	January 30, 2013	Present
Failure to Submit Annual Report	n/a	n/a	January 30, 2014	Present
Failure to Submit Annual Report	n/a	n/a	January 30, 2015	Present
Failure to Submit Annual Report	n/a	n/a	January 30, 2016	Present

